

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

**JULIO CESAR ORTEGA
CAMPOVERDE,**

Petitioner-Plaintiff,

vs.

CLAIR DOLL, in his official capacity as Warden of York County Prison; SIMONA FLORES-LUND, in her official capacity as Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; MATTHEW ALBENCE, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; CHAD WOLF, in his official capacity as Acting Secretary, U.S. Department of Homeland Security; and WILLIAM BARR, in his official capacity as Attorney General, U.S. Department of Justice,

Respondents-Defendants.

Case No.

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS UNDER
28 U.S.C. § 2241 AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This case is about whether the federal government can legally continue to detain a non-citizen in civil immigration detention simply because he cannot afford to pay his bond. Under the Fifth Amendment's due process and equal

protection guarantees, the answer is clearly no: the government cannot ignore a person's financial circumstances and ability to pay when setting bond. To permit such a practice would allow for wealth-based detention and contravene basic notions of due process.

2. Petitioner-Plaintiff Julio Cesar Ortega Campoverde is an immigration detainee who has been detained for over 18 months. He is a doting father to six children and a loving husband who has lived in the United States for more than 21 years. He is neither a public safety threat nor a flight risk, as evidenced by an immigration judge setting bond. Yet he remains detained because the immigration judge (IJ) did not consider his financial situation and ability to pay in setting a \$10,000 straight cash bond that Mr. Ortega Campoverde and his family cannot afford.

3. Mr. Ortega Campoverde's continued detention has not only led to devastating financial consequences for his family but has severely impacted the emotional well-being of his U.S. citizen wife and six children. Most acutely impacted are his three children who are disabled. His detention also prevents him from effectively preparing for his upcoming merits hearing on April 8. These harms are irreparable and there is no adequate remedy at law.

4. In addition to the government's unconstitutional practice of failing to consider a person's ability to pay, the government's practice of allocating the

burden to proof to the detainee to demonstrate that they are not a threat or flight risk effectively reverses the usual constitutional presumption of liberty. The government's failure to consider ability to pay also violates the Immigration and Nationality Act ("INA").

5. Absent intervention from this Court, Mr. Ortega Campoverde will continue to be detained in violation of his constitutional due process and equal protection rights. He seeks an order from this Court releasing him from detention, or, in the alternative, an Order requiring that he be provided a constitutionally adequate bond hearing during which: (1) Mr. Ortega Campoverde's ability to pay is considered in determining how much, if any, bond is necessary to assure his attendance at future proceedings and where there is a determination and findings concerning whether alternative non-monetary conditions of release would mitigate any concern of flight risk; and (2) the government bears the burden to justify detention by clear and convincing evidence that no condition or combination of conditions will reasonably assure Mr. Ortega Campoverde's future appearance and the safety of the community.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this petition pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act) and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

7. Venue is proper in the Middle District of Pennsylvania because a substantial portion of the relevant events occurred in the District, *see* 28 U.S.C. § 1391(b), (e)(1), and because Mr. Ortega Campoverde is imprisoned at the York County Prison, which is located within the District, *see* 28 U.S.C. § 2242.

PARTIES

8. Plaintiff-Petitioner Julio Cesar Ortega Campoverde is 41-years old and a citizen of Ecuador. He has been held in immigration detention since August 2018. He is currently detained by Immigration and Customs Enforcement (ICE) at York County Prison in York, Pennsylvania.

9. Respondent-Defendant Clair Doll is the Warden of the York County Prison in York, Pennsylvania, and is Mr. Ortega Campoverde's immediate, physical custodian. He is sued in his official capacity.

10. Respondent-Defendant Simona Flores-Lund is sued in her official capacity as the Field Office Director for Enforcement and Removal Operations in the Philadelphia Field Office of ICE. In this capacity, she exercises control over immigration detainees held at the facility confining Mr. Ortega Campoverde and has authority to order his release, and thus also is his legal custodian.

11. Respondent-Defendant Matthew Albence is sued in his official capacity as the Acting Director for ICE, the sub-agency within the U.S. Department of Homeland Security (DHS) that carries out the detention of

noncitizens in removal proceedings within the U.S. As such, he has authority to order Mr. Ortega Campoverde's release and is another one of his legal custodians.

12. Respondent-Defendant Chad Wolf is sued in his official capacity as the Acting Secretary for DHS. In this capacity, he has responsibility for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a), has authority over ICE and its field offices, has authority to order Mr. Ortega Campoverde's release, and is also one of his legal custodians.

13. Respondent-Defendant William Barr is sued in his official capacity as the Attorney General of the United States. In this capacity, he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees the Executive Office for Immigration Review (EOIR). Consequently, he has the authority to implement an order of this Court requiring EOIR to conduct a constitutionally adequate bond hearing.

STATEMENT OF FACTS

Mr. Ortega Campoverde's Background and Family Circumstances

14. Over the last 21 years, Mr. Ortega Campoverde has formed deep ties in the United States. Originally from Ecuador, Mr. Ortega Campoverde traveled to the United States in October 1998, after he completed his military service.

15. He lived in New Jersey and worked in construction until he met his wife, Maria.¹ Their budding relationship brought him to Allentown, Pennsylvania. They have now been married for nearly 12 years.

16. Together, they have four U.S. citizen children, ages 7, 8, 10, and 11. Also part of the family are Maria's two teenage sons, ages 15 and 17 (who are also U.S. citizens). Prior to Mr. Ortega Campoverde's detention, they all lived together in single family home in Allentown, Pennsylvania.

17. Maria is a U.S citizen, as is Mr. Ortega Campoverde's brother, who lives nearby in New Jersey. Mr. Ortega Campoverde's mother is a lawful permanent resident.

18. Before ICE detained Mr. Ortega Campoverde, he worked as a handyman in his neighborhood, earning about \$300 a week. His family depended on him as the primary breadwinner.

19. The family's financial means while Mr. Ortega Campoverde was home and working already were limited, but his detention has severely strained their financial resources. His family now is thousands of dollars in debt due to utility bills they cannot pay. *See* Ex. B (notice from the utility company of past due amount of \$8,944.96).

¹ Mr. Ortega Campoverde is not using his wife's full name to protect the family's privacy.

20. Maria cannot work due to ongoing health issues and because of her parental responsibilities for her six children. She recently had surgery and continues to struggle with ongoing health issues.

21. Mr. Ortega Campoverde's detention has also impacted Maria's emotional well-being. Mr. Ortega Campoverde and Maria talk by phone only occasionally because of the expense. His absence from their home has caused her palpable distress. She is depressed and misses her husband, who has been her support and confidant for many years.

22. Mr. Ortega Campoverde's detention has also impacted his children. It has interrupted their daily routines, like school pick up and drop off, as well as beloved weekend activities, including attending church, where his children found joy and laughter in singing hymns as a family.

23. Mr. Ortega Campoverde's children have also suffered emotionally because of his detention. His detention has been particularly difficult for his 11-year-old daughter. She has fits of anger and extreme sadness where she cries at school. Her behavioral issues, which began after Mr. Ortega Campoverde's detention, affect her ability to learn.

24. Mr. Ortega Campoverde's 7-year-old son's mental and physical well-being has also suffered since his detention. He is autistic and nearly non-verbal. While he receives regular therapy, it was Mr. Ortega Campoverde who was the

most skilled at connecting with him, teaching him a four-sentence prayer, which was the most he had ever recited. Since Mr. Ortega Campoverde's detention, his son's speech skills have regressed. He has tantrums at school multiple days a week where he becomes inconsolable.

Mr. Ortega Campoverde's Criminal History and Removal Proceedings

25. In his 21 years in the United States, Mr. Ortega Campoverde has had three minor criminal contacts: a 2013 arrest for simple assault, in which the charges were dismissed; a 2016 summary offense for an open container, for which he paid a fine; and a July 2018 arrest for simple assault, harassment, and disorderly conduct.

26. In his July 2018 arrest, Mr. Ortega Campoverde was granted a \$5,000 bail. He subsequently entered into a plea deal and pled guilty plea to simple assault. He was sentenced to 1 year of probation.

27. Despite Mr. Ortega Campoverde's compliance with the terms and conditions of his probation, his probation officer asked him to come in a day before his regularly scheduled check-in. When he arrived, he was greeted by an ICE officer, who arrested him.

28. The ICE officer transported him to York County Prison, where an ICE officer asked Mr. Ortega Campoverde if he wanted to fight his case. Mr. Ortega

Campoverde affirmed that he did. The ICE officer did not inform him of their initial custody determination, but Mr. Ortega Campoverde remained detained.

29. Unable to afford counsel, Mr. Ortega Campoverde initially represented himself in his immigration proceedings. He sought bond on September 27, 2018. At that hearing, the immigration judge (IJ) denied bond because he believed (mistakenly) that the conviction for simple assault was a crime involving moral turpitude (“CIMT”) that subjected Mr. Ortega Campoverde to mandatory detention under 8 U.S.C. § 1226(c).

30. At a subsequent hearing on November 13, 2018, Mr. Ortega Campoverde again proceeded pro se. The IJ found that Mr. Ortega Campoverde’s conviction also made him ineligible for non-lawful permanent resident cancellation of removal and ordered him removed.

31. Mr. Ortega Campoverde, still proceeding pro se, appealed the IJ’s order of removal to the Board of Immigration Appeals (BIA). Before his brief became due, he secured pro bono immigration counsel from a Philadelphia-based non-profit organization.

32. In February 2019, Mr. Ortega Campoverde sought relief in his state court criminal proceedings under the Post-Conviction Relief Act (PCRA) because he was unaware of the immigration consequences of his simple assault conviction.

The Lehigh County Court of Common Pleas appointed him pro bono counsel in his PCRA petition.

33. While his PCRA petition was still pending, the BIA held that the IJ erred in classifying Mr. Ortega Campoverde's conviction as a CIMT. It remanded the matter back to the IJ on April 2, 2019. The government, however, filed a motion for reconsideration, which the BIA denied.

34. On May 14, 2019, the Lehigh County Court of Common Pleas granted Mr. Ortega Campoverde's PCRA petition, thereby vacating his simple assault conviction. Later that same month, Mr. Ortega Campoverde resolved the July 2018 charges by pleading guilty to two summary counts of disorderly conduct and two summary offenses of harassment. He was sentenced to probation.

35. Shortly thereafter, Mr. Ortega Campoverde and his pro bono immigration attorney prepared his application for Non-Lawful Permanent Resident Cancellation of Removal (including supporting evidence), which they were ready to file.

36. Despite Mr. Ortega Campoverde's readiness to proceed on an application for immigration relief eight months ago, he could not proceed on his claim for relief.

37. This unconscionable delay occurred initially because of the government's then-pending motion to the BIA to reconsider its decision about

whether a simple assault conviction is a CIMT. Remarkably, after Mr. Ortega Campoverde's conviction for simple assault was vacated—rendering the government's motion moot—the government refused to withdraw the motion.² The delay continued even after the BIA dismissed the appeal because the York immigration court claimed it did not have Mr. Ortega Campoverde's immigration file and therefore could not proceed on the merits of the case.

38. Not until February 6, 2020, did the immigration court schedule Mr. Ortega Campoverde's merits hearing, which is now set for April 8, 2020.

Mr. Ortega Campoverde's Constitutionally Deficient Bond Hearing

39. On November 5, 2019, Mr. Ortega Campoverde received a bond hearing before an IJ at the York Immigration Court under 8 U.S.C. § 1226(a). The IJ required that, in order to be released on bond, Mr. Ortega Campoverde carry the burden to prove he is not a danger or flight risk.

40. In connection with that bond hearing, Mr. Ortega Campoverde's immigration attorney submitted, among other things, six letters of support from friends. The letters described Mr. Ortega Campoverde as a friend who is “like a brother,” who “gives his life for them, for his children,” and as someone who is

² The matter resolved when the BIA eventually dismissed the appeal on December 23, 2019.

“humble and quiet,” and “always willing to help the needy.” *See* Ex. A (letters of support).

41. Mr. Ortega Campoverde’s immigration attorney also presented evidence of the family’s dire financial situation and his inability to pay a bond. *See* Ex. B (notice from the utility company of past due amount of \$8,944.96); *see also* Ex. C (bank statements showing a negative or zero dollar balance); *see also* Ex. D (SSI benefits for three of the children).

42. The only evidence the government provided was the DHS Form I-213, Records of Deportable/Admissible Alien for Mr. Ortega Campoverde, which is a report prepared by an ICE officer that summarizes the ICE arrest, and records related to Mr. Ortega Campoverde’s July 2018 arrest.

43. The IJ determined that bond was appropriate, which entails a finding that Mr. Ortega Campoverde is not a danger or flight risk. Despite this, and without considering the evidence presented about Mr. Ortega Campoverde’s financial circumstances, the IJ set a \$10,000 bond. *See* Ex. E. At no time during the bond hearing or in granting bond did the IJ communicate that the \$10,000 bond was set in consideration of Mr. Ortega Campoverde’s ability to pay. In fact, despite immigration counsel renewing Mr. Ortega Campoverde’s inability to pay after the IJ set the \$10,000 cash bond, the IJ said, “that is going to be the court’s decision.”

44. Because Respondents require detainees to post the full bond, *i.e.*, they cannot pay a percentage or post some form of surety—which is the practice in most criminal courts—Mr. Ortega Campoverde must pay the entire \$10,000 to secure release. Given that his family’s liabilities far exceed their assets and that their bank balance is zero, the \$10,000 bond far exceeds any amount Mr. Ortega Campoverde or his family can afford.

45. Mr. Ortega Campoverde has not been able to pay his bond and has been detained for over 18 months.

Mr. Ortega Campoverde’s Ongoing Detention is Causing Him Significant Harm for which There is no Adequate Remedy at Law

46. Mr. Ortega Campoverde’s continued detention is causing him significant and irreparable harm. He misses his family dearly and wishes nothing more than to be home with them. His family is suffering emotionally and financially from his ongoing detention. Two of his children have developed new behavioral issues since his detention. All of his children have been harmed by his absence, but especially his three children with disabilities. Financially, his family is struggling to make ends meet. They owe thousands of dollars in utility bills that they cannot pay and are at risk of having their utilities turned off.

47. Mr. Ortega Campoverde’s detention also impacts his ability to fully participate in his immigration case. For instance, he has been unable to gather documents necessary for his upcoming immigration hearing.

48. While Mr. Ortega Campoverde was fortunate to obtain pro bono immigration representation from a Philadelphia-based non-profit (which has limited capacity to provide representation in detained cases), his detention hinders his ability to fully prepare for his case. Communication with his immigration attorney is limited to in-person visits, which is at least a four-hour-round trip from the immigration attorney's office. His detention prevents him from communicating more regularly with the attorney.

49. Were Mr. Ortega Campoverde at liberty, his chances of success would greatly increase. He would have the ability to meet with his immigration attorney in-person to prepare for his case and could gather supporting evidence to bolster his claim for relief.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF Fifth Amendment to the Constitution (Due Process)

50. The forgoing allegations are re-alleged and incorporated herein.

51. The Fifth Amendment's Due Process Clause provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law."

52. Civil immigration detainees, including Mr. Ortega Campoverde, are "persons" who may not be deprived of liberty without due process of law.

53. The Due Process Clause permits civil immigration detention only where such detention is reasonably related to the government's interests in preventing flight and protecting the community from danger, and requires adequate procedures to ensure that detention is serving those goals.

54. The Due Process Clause prohibits jailing a person solely because of their poverty. Thus, due process prohibits detaining a civil immigration detainee on a monetary bond without determining whether a lower bond amount or alternative non-monetary conditions of release would ensure their future appearance.

55. Respondents have violated Mr. Ortega Campoverde's due process rights by subjecting him to a system of wealth-based detention in which he remains imprisoned because he cannot afford a monetary bail, which the IJ set without inquiry into, or findings concerning, his ability to pay, and without a determination and findings concerning whether alternative non-monetary conditions of release would mitigate flight risk, which in light of Mr. Ortega Campoverde's extensive family ties in the community is *de minimis*.

56. The Due Process Clause also requires that Mr. Ortega Campoverde be afforded a constitutionally adequate bond hearing, wherein the burden is properly allocated to the government to demonstrate, through clear and convincing evidence, why detention is necessary.

57. Because Mr. Ortega Campoverde was not afforded a constitutionally adequate bond hearing, the Court should order Mr. Ortega Campoverde's release or, alternatively, a constitutionally adequate bond hearing where Mr. Ortega Campoverde's ability to pay is considered and where the burden of proof is properly placed on the government.

SECOND CLAIM FOR RELIEF
Fifth Amendment to the Constitution
(Equal Protection)

58. The foregoing allegations are re-alleged and incorporated herein.

59. The Fifth Amendment prohibits denying individuals the equal protection of the laws.

60. The government's detention of Mr. Ortega Campoverde because he lacks the financial resources to pay a money bond, while affording release to individuals who can afford a money bond, discriminates against individuals who are indigent or lack the resources to pay their bonds.

61. The Fifth Amendment's equal protection guarantee does not permit the government to detain Mr. Ortega Campoverde on a full cash bond absent a determination of his ability to pay the bond amount and whether an alternative form of bond or other conditions of supervision, alone or in combination with a lower bond, would sufficiently mitigate flight risk.

THIRD CLAIM FOR RELIEF
Immigration and Nationality Act, 8 U.S.C. § 1226(a)
(Failure to Consider Ability to Pay)

62. The foregoing allegations are re-alleged and incorporated herein.

63. Under 8 U.S.C. § 1226(a), Respondents are authorized to release civil immigration detainees, including Mr. Ortega Campoverde, on a monetary bond of at least \$1,500 or on conditional parole.

64. The purpose of §1226(a) is to permit release or detention. If release is permitted but ability to pay is not considered, the release option set forth in the statute is effectively eliminated, at least as to indigent detainees.

65. Thus, § 1226(a), as correctly interpreted, requires that the bond or other conditions of release for detained individuals be reasonable. A reasonable bond or conditions of release cannot be determined without adequately considering detainees' financial circumstances and whether alternative non-monetary conditions of release would mitigate flight risk.

66. Additionally, the canon of constitutional avoidance requires that this statute be construed to require consideration of ability to pay.

67. As such, Respondents' detention of Mr. Ortega Campoverde under § 1226(a), without such protections, violates the Immigration and Nationality Act.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully asks this Court to GRANT the following relief:

1. Assume jurisdiction over this matter;
2. Declare that Respondents' detention of Mr. Ortega Campoverde violates his rights under the Fifth Amendment to the U.S. Constitution because the IJ failed to consider Petitioner's ability to pay the \$10,000 bond and placed on him the burden to prove bond eligibility, and that the foregoing flaws also violate the Immigration and Nationality Act;
3. Order Respondents to immediately release Mr. Ortega Campoverde on his own recognizance or on reasonable conditions of supervision;
4. Alternatively, order a constitutionally adequate bond hearing during which (1) Mr. Ortega Campoverde's ability to pay is considered in determining whether the amount of any bond is justified and where there is a determination and findings concerning whether alternative non-monetary conditions of release would mitigate flight risk; and (2) the government bears the burden to justify detention by clear and convincing evidence that no condition or combination of conditions will reasonably assure Mr. Ortega Campoverde's future appearance and the safety of the community;
5. Enjoin Respondents from removing Mr. Ortega Campoverde from this judicial district during the pendency of this Petition's claims;
6. Grant an award of attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.*, if applicable; and
7. Grant any further relief this Court deems just and proper.

Dated: February 24, 2020

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Respectfully Submitted,

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**Petition for special admission to the bar of the Court forthcoming*

↓Petition for general admission to the bar of the Court forthcoming

VERIFICATION PURSUANT TO 28 U.S.C. SECTION 2242

I am Julio Cesar Ortega Campoverde, the petitioner-plaintiff in this matter. I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge. Regarding all statements for which I have personal knowledge, I declare under penalty of perjury that they are true and correct.

2 19 2020

Date

Julio ORTEGA

Julio Cesar Ortega Campoverde